ISSUES PRESENTED

1. Whether petitioners were deprived of the right to a meaningful appeal because the court of appeals wrote only a brief *per curiam* opinion.

2. Whether petitioners were denied their right to a speedy trial.

STATEMENT

After a jury trial in the United States District Court for the Central District of California, petitioners were convicted of having knowingly concealed and transported heroin in violation of 21 U.S.C. (1964 ed.) 174, and of conspiring to violate that statute and 26 U.S.C. (1964 ed.), 4704a (forbidding distribution of narcotics in other than their original stamped package). On May 18, 1970, petitioner Williams was sentenced to concurrent prison terms of eight years and petitioner Whitaker to concurrent terms of six years.

The evidence at trial showed that on February 5, 1968, a government informer, Julius Bishop, was introduced to petitioner Williams during a poker game in Venice, California (Tr. 16, 224). At Williams' suggestion Bishop met Williams and petitioner Whitaker the next evening, at which time petitioners outlined their plan to supply the Seattle, Washington, area with narcotics (Tr. 18–22). Bishop's role was to introduce Whitaker to prospective buyers in Seattle (Tr. 20–22). Before Whitaker's departure for Seattle with Bishop, Williams gave Whitaker some samples to show prospective customers (Tr. 26–27). Upon their arrival at his home in Seattle, Bishop telephoned federal agents, one of whom (Abbey) came to Bishop's home on February 8, 1968, posing as a buyer

for some narcotics (Tr. 27–33, 120–131). After the agent agreed to purchase some heroin, Whitaker drove to a nearby service station and telephoned Williams to place an order (Tr. 33–34). Bishop introduced Whitaker to several other buyers and was present on one occasion when Whitaker called Williams to place an order (Tr. 34–40). After Whitaker informed him that the first order would arrive by mail, Bishop telephoned federal agents on February 9, 1968, to notify them of the expected arrival of narcotics (Tr. 41). The next day a package addressed to Bishop, bearing a return address of Venice, California, was intercepted at the post office and found to contain heroin and cocaine (Tr. 135–137, 147–149, 185).

ARGUMENT

1. The fact that the court of appeals did not write a long opinion does not show that it failed adequately to review petitioners' contentions. There is no obligation on the part of any court to write an opinion in every case. Here the court specifically addressed itself to and rejected the claim that petitioners' right to a speedy trial had been denied. In terming this claim petitioners' "best point" the court by implication indicated that it had also considered the other two grounds for appeal, which were insubstantial.[1]

[1] Petitioners had challenged the admission at trial of heroin and cocaine sent through the mails to a government informant. This evidence was relevant as proof of petitioners' plan to supply illegal narcotics to the Seattle area. Although the package and its outer wrapping were destroyed while undergoing tests prior to trial, a photograph of the outside of the

2. Petitioners' argument that they were denied their right to a speedy trial is also without merit. After being indicted in Seattle in February 1968, petitioners had their case transferred to Los Angeles in April of that year pursuant to their motion for a change of venue. In November, the government secured a dismissal of the indictment after efforts to locate an essential witness, Julius Bishop, proved unsuccessful. When Bishop was later located, the government again indicted petitioners, in February 1969. Petitioners, however, were not found until they voluntarily surrendered in July of that year. They were then arraigned in Seattle and a trial date was set. Again they moved for a change of venue to Los Angeles. The motion was granted in September 1969, and petitioners, after seeking a continuance, were arraigned in Los Angeles in November. They thereafter filed a motion to quash the indictment for denial of a speedy trial and in December the motion was heard and denied without prejudice. Later that same month the motion was finally denied on the ground that no prejudice had been shown. Petitioners next filed a petition for a writ of mandamus challenging the district court's denial of their motion to quash. The court of appeals stayed all proceedings pending disposition of the petition. On January 29, 1970, the court of ap-

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package was introduced at trial and, with its help, a chain of possession of the narcotics established. Petitioners also contended on appeal that the trial judge had erred in failing to instruct the jury on entrapment. Having taken the witness stand and denied any criminal involvement, petitioners were precluded from raising the defense of entrapment. There was in any event no evidence of enticement by government agents.

peals dismissed the petition and petitioners were tried from March 31 to April 2 of that year.

The lapse in time between the return of the original indictment and the trial was neither purposeful nor oppressive and did not substantially prejudice Williams and Whitaker in the presentation of their defense. See *United States* v. *Ewell,* 383 U.S. 116. Although three months of the delay were attributable to the government while it tried to locate a material witness, a large measure of the remaining delay was related to the numerous motions made by petitioners, including two motions for change of venue, several continuances, and a petition for a writ of mandamus.

The prejudice alleged by petitioners was the death of one potential witness, the inability to locate another, and the destruction of the wrapping of the package which contained the heroin and cocaine. Apart from the assertions set forth by Williams in his affidavit, there is no indication as to how the "witnesses" might have testified. Moreover, even if the affidavit is believed, petitioner's case is not strengthened. Although the testimony of Williams' grandmother might have contradicted the testimony of Bishop that he met Williams on the night of February 6, 1968, it also would have contradicted Williams' own assertion at trial that he spent the days of February 6–9 working in Santa Monica (Tr. 276–280). Clark Buster was alleged to be the missing witness who would have testified that he and not petitioner was present when the call from co-defendant Whitaker was received. As to this allegation we note

that neither petitioner (who testified in his own behalf) nor the defense witnesses at trial, all of whom would have been in a position to know, testified at trial that Buster was present at the telephone number where the calls from Seattle were received, or that Buster could testify that Williams was not there.

Petitioners never demonstrated how they were prejudiced by the destruction of the package.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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